



August 18, 2003

Kay Turner, Agency Procurement Official
University of Arkansas at Pine Bluff
1200 N. University Dr.
Mail Slot 4943
Pine Bluff, AR 71601

Re: Advisory Opinion #483-03-19

Dear Ms. Turner:

This letter is in response to your request for an advisory opinion in accordance with §19-11-715(b) of the Arkansas Code Annotated of 1987. Your request for an advisory opinion is based on the following facts:

- a) UAPB intends to release an RFP for marketing services for identifying advertisement sources to support the campus radio/television station.
- b) You are requesting an opinion as to whether such an RFP that calls for payment to the firm to be taken from the advertising revenues, must be procured in accordance with the State Procurement Law.

In the event that the proposed contract uses foundation funds neither the Ethics in Public Contracting Law (ACA §19-11-701 et. seq.) nor Governor's Executive Order #98-04 apply. However, both would apply if the project uses appropriated funds or cash funds deposited in the Treasury. In addition, Act 1095 of 2003 provides a means for funding a project by paying with anticipated returns to the state but only for technology related projects.

As regards your second question of potential ethical conflict, we think employees of the radio/television department are too close to the procurement process to be allowed to bid on such a project or serve as subcontractors. One of the roles such employees are required to fulfill is that of monitoring performance of such contracts. An ethical dilemma would occur when they would be evaluating their own work.

This advisory opinion is issued in accordance with Arkansas Code Annotated §19-11-715(b) and compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Act and EO 98-04.

Sincerely

Richard A. Weiss
Director

Cc: Joe Giddis
Tom Gay, Office of Atty Gen.